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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,980	07/28/2003	Erez Sali	1235-US	4106
24505	7590	06/15/2005	EXAMINER	
DANIEL J SWIRSKY PO BOX 2345 BEIT SHEMESH, 99544 ISRAEL			LEE, DIANE I	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/627,980	SALI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	D. I. Lee	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 5/24/05 (Response to Election).  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-18 is/are pending in the application.  
 4a) Of the above claim(s) 1-4 and 10-13 is/are withdrawn from consideration.  
 5) Claim(s) 6-9 and 15-18 is/are allowed.  
 6) Claim(s) 5 and 14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 28 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/29/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

1. Receipt is acknowledged of the Applicant's response of Restriction Requirement filed 24 May 2005, which Applicant's elected to prosecute Group II (i.e., the species of Figure 2) directed to claims 5-9 and 14-18. Accordingly, claims 1-4 and 10-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected claims.

### ***Claim Objections***

2. Claims 5- are objected to because of the following informalities:

- (a) Re claim 5, line 4: "the design" should be changed to --a design--; and
- (b) Re claim 5, line 5: "the output" should be changed to --an output--. Appropriate correction is required.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 5 and 14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 and 7-8 of U.S. Patent No. 6,902,113. Although the conflicting claims are not identical, they are not patentably distinct from each other.

For instance, the discussion of claim 5 of the present claimed invention and claim 1 of U.S.

Patent No. 6,902,113, shown below:

Re claim 5. A calibration unit for a color bar code system, the calibration unit comprising:

a color chart generator to generate at least one color chart of color patches of the N bar code colors (i.e., bar code being formed of a subset of N bar code colors, see claim 1, lines 2-3 of U.S. Patent No. 6,902,113, and wherein the range of colors is producable by a printer, see claim 1, lines 10-12 of U.S. Patent No. 6,902,113) and utilized by said color bar code system (i.e., the bar code that is formed of a subset of N bar code colors would obviously be utilized by a bar code system); and

a color calibrator to receive the design of said color chart from said generator and the output of a camera reader upon reading said color chart under varying conditions (i.e., a color space generator to receive an output of a camera reader upon reading said at least one color chart with at least one illumination, see claim 1, lines 13-16 of U.S. Patent No. 6,902,113) and

the output of a camera reader upon reading said color chart under varying conditions and to associate said output corresponding to each said color patch, per condition, with one of said N bar code colors (see claim 1, lines 13-16 of U.S. Patent No. 6,902,113).

Thus, in respect to above discussion, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to use the teachings of claims 1-2 and 7-8 of U.S. Patent No. 6,902,113 as general teachings for a color bar code system as claimed by the present application. The instant claims obviously encompass the claimed invention of U.S. Patent No. 6,902,113 and differ only in terminology and/or are broader in scope.

***Allowable Subject Matter***

5. Claims 5-9 and 14-18 would be allowable upon a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome the nonstatutory double patenting rejection, as set forth above.

6. The following is an examiner's statement of reasons for allowance:

Watson [US 6,599,476] discloses a bar code reader reading a bar code label on the tube, wherein the illumination for imagining the tube is provided by fluorescent lamps, which causes variation in brightness. The captured images of the contrasting color patches are used to calibrate a bias due to variation in brightness of the light. The bias is calibrated by comparing the brightness level between captured images of the color patches and that stored in memory of a computer of the controller.

Fredlund et al. [US 6,724,990] discloses a digital camera acquiring an image. The digital image signal from the camera is processed and individual color separations, such as red, green and blue color files are extracted. The digital image is stored in the memory. The processed digital image signal is combined with calibration and timing information. The calibration information is in the form of an exposure series created by known code values applied to the write head. Additional data such as the code values used to create the calibration information, the resolution of the images, and the coordinates of the color space represented by the color separations are provided in a bar code region.

Kinoshita et al. [US 5,426,289, cited by the applicant] discloses a color code for displaying information using an arranged combination of a plurality of color phase marks. The color code includes a plurality of column marks arranged at uniform intervals and a plurality of color phase marks arranged around the periphery of each of the plurality of column marks using each of the plurality of column marks as a reference. Initially, a column mark is read out,

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and after its arrangement has been determined, the color phase marks arranged at predetermined positions around the periphery of the column mark are read out. The codes, i.e. data, are then obtained by referencing combinations of color phases of the color phase marks read out with a predetermined color code table.

The prior art of the record fails to teach or fairly suggest the specific calibration unit for a color bar code system having a color chart generator generating the color chart of color patches of the N bar code colors and a color calibrator associating the output of the reader corresponding to each of the color patch, per condition, with one of the N bar code colors, as set forth in the claims

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is (571) 272-2399. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. I. Lee  
Primary Examiner  
Art Unit 2876